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Attorneys for Plaintiff UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No.: CR 05-00400 SI
)	
Plaintiff,)	STIPULATION AND [PROPOSED]
)	ORDER EXCLUDING TIME
v.)	FROM SPEEDY TRIAL CALCULATION
ANDRE BENARD,)	
)	
Defendant.)	

With the agreement of the parties, the Court enters this Order excluding the time period from October 25, 2005, through December 1, 2005 under the Speedy Trial Act, 18 U.S.C.

§ 3161. The parties agree, and the Court finds and holds, as follows:

1. The parties appeared before the Court on September 23, 2005, for a status hearing. Defense counsel requested that the firearm at issue in this case be tested for the presence of DNA. The United States agreed to submit the firearm for DNA testing on an expedited basis and did so during the first week of October after collecting saliva swabs from the Defendant (with his consent and the consent of defense counsel). According to the San Francisco Police Department Crime Lab, the DNA analysis will take between six and eight weeks to complete.

2. Because the Defendant wishes to know the outcome of the DNA testing before proceeding further in this matter, the parties jointly request that the Court continue the status

hearing in this case from October 25, 2005, at 11:00 a.m. to December 1, 2005, at 11:00 a.m., the next calendar date that both the Court and all of the parties are available. The government anticipates, based on the estimate provided by the crime lab, that the DNA testing will have been completed by December 1st.

3. In light of the foregoing facts, the parties stipulate that the failure to grant the requested continuance would unreasonably deny the Defendant effective preparation of counsel taking into account the exercise of due diligence, that the ends of justice would be served by the Court excluding the proposed time period, that these ends outweigh the best interest of the public and the Defendant in a speedy trial, and that the time period from October 25, 2005 through December 1, 2005 shall be excluded from the Speedy Trial Act calculation. 18 U.S.C. § 3161(h)(8)(A), (B)(iv).

SO STIPULATED.

DATED: __ October 24, 2005 __

/S/ MARK GOLDROSEN
MARK GOLDROSEN
Attorney for Defendant Andre Benard

DATED: __ October 24, 2005 __

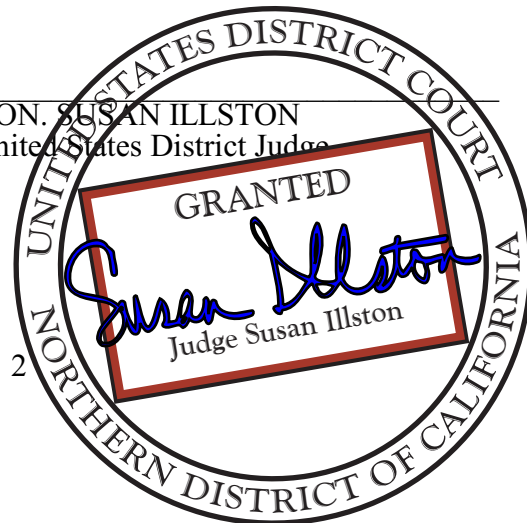
/S/ EDWARD TORPOCO
EDWARD TORPOCO
Assistant United States Attorney

In light of the foregoing facts, and with the consent of the parties, the Court hereby orders that the period from October 25, 2005 through December 1, 2005 be excluded from the Speedy Trial Act calculation under 18 U.S.C. § 3161(h)(8)(A), B(iv).

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____

HON. SUSAN ILLSTON
United States District Judge



STIPULATION AND ORDER
CR 05-00400 SI